

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
DTV Consumer Education Initiative	)	MB Docket No. 07-148
	)	
	)	

To: The Commission

**COMMENTS OF ALLTEL COMMUNICATIONS, LLC**

**I. INTRODUCTION AND SUMMARY**

Alltel Communications, LLC (“Alltel”) hereby submits these comments in response to the Federal Communications Commission’s (the “Commission”) April 23, 2008 Further Notice of Proposed Rulemaking (“FNPRM”) in the above-captioned proceeding.<sup>1</sup> The FNPRM seeks comment on a proposal requiring eligible telecommunications carriers (“ETCs”) to provide monthly notices of the digital television (“DTV”) transition to all of their subscribers (the “Proposal”), rather than just Lifeline/Link-Up customers.<sup>2</sup> Alltel understands the importance of ensuring that consumers are aware of the DTV transition, and Alltel supports the Commission’s efforts to date. For example, Alltel has taken significant steps to provide DTV transition information to its Lifeline/Link-Up customers, given that they are most likely to be impacted by the transition. However, as described herein, Alltel does not believe this Proposal would effectively inform potentially impacted consumers and, instead, merely imposes unnecessary costs on ETCs. Therefore, Alltel respectfully requests that the Commission reject the Proposal based upon the reasons given below.

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<sup>1</sup> *In the Matter of DTV Consumer Education Initiative*, Further Notice of Proposed Rulemaking, MB Docket No. 07-148, FCC 08-119 (rel. Apr. 23, 2008) (“*DTV Consumer Education FNPRM*”).

<sup>2</sup> *DTV Consumer Education FNPRM* ¶ 18.

## II. THE PROPOSAL LACKS A REASONABLE NEXUS FOR JUSTIFYING ANCILLARY JURISDICTION.

Requiring ETCs to provide monthly notices to all of their customers is not reasonably ancillary to the effective performance of the Commission's duty to ensure the success of the DTV transition. To exercise ancillary jurisdiction, the Commission must have subject matter jurisdiction under Title I of the Communications Act of 1934, as amended (the "Act"), over the subject of the regulation and the regulation must be "reasonably ancillary to the effective performance of [the Commission's] various responsibilities."<sup>3</sup>

In the *DTV Consumer Education Order* (the "Order"),<sup>4</sup> the Commission concluded that it had ancillary jurisdiction to require ETCs to provide monthly notice to Lifeline/Link-Up subscribers.<sup>5</sup> The Commission based its conclusion on the fact that (1) all ETCs receiving federal universal service funds are telecommunications carriers, over which the Commission has subject matter jurisdiction under Section 2(a) of the Act and (2) Lifeline/Link-Up customers are low-income consumers who are more likely to have television service that will be adversely impacted by the DTV transition.<sup>6</sup> Therefore, the requirement that ETCs provide monthly notices to Lifeline/Link-Up customers was reasonably ancillary to the effective performance of the Commission's duty to ensure the success of the DTV transition because it took advantage of "an already established communication path that [could] be used to further the success of the DTV transition."<sup>7</sup>

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<sup>3</sup> *United States v. Southwestern Cable Co.*, 392 U.S. 157, 177-78 (1968).

<sup>4</sup> *In the Matter of DTV Consumer Education Initiative*, Report and Order, 23 FCC Rcd 4134, MB Docket No. 07-148, FCC 08-56 (rel. Mar. 3, 2008) ("*DTV Consumer Education Order*").

<sup>5</sup> *DTV Consumer Education Order* ¶ 55.

<sup>6</sup> *Id.* ¶ 57.

<sup>7</sup> *Id.*

Regardless of whether the Commission has subject matter jurisdiction to extend the DTV notification obligation, the Proposal is not reasonably connected to notifying those low-income consumers the Commission has determined are most at risk of losing television service because of the DTV transition. In the Order, the Commission identified that at-risk group as *low-income* users, and the nexus justifying the Order's requirement was that Lifeline/Link-Up programs serve this *low-income* demographic.<sup>8</sup> This low-income link fails to exist for a requirement to notify households at *all income levels*. Non-Lifeline/Link-Up customers in ETC areas are no different than any other wireless customer in any other area of the country. Therefore, there is no reasonable basis for singling out these customers for the DTV notice simply because they live in areas where there is a wireless ETC. As a result, the Commission is without a reasonable nexus for establishing ancillary jurisdiction and would, therefore, exceed its delegated authority if it adopted the Proposal.<sup>9</sup>

### **III. THE PROPOSAL IMPOSES SIGNIFICANT, UNDUE BURDENS ON ETCs WITHOUT COUNTERVEILING BENEFITS.**

In the FNPRM, the Commission recognized that the Proposal “could increase expenses for ETCs” and thus recognized that the wider reach of the notice might not, in fact, be justified by the additional costs imposed on ETCs.<sup>10</sup> The Commission appropriately recognized that there are costs associated with the broader DTV notice requirement, and Alltel submits herein that those costs are not justified by the additional reach of the notice. In other words, Alltel

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<sup>8</sup> *Id.*

<sup>9</sup> Additionally, the Proposal also raises a constitutional issue of whether the Proposal is a narrowly tailored means of serving the Commission's objective of informing those most likely to be affected by the DTV transition. *See Pacific Gas & Electric Co. v. Public Utilities Commission of California*, 475 U.S. 1, 19 (1986).

<sup>10</sup> *See DTV Consumer Education FNPRM* ¶ 18.

respectfully submits that the Proposal extending the notification obligation to “all” of an ETC’s customers is not, as the Commission is seeking, an “appropriate balance.”<sup>11</sup>

First, Alltel’s billing system is only capable of manually segregating out customers in ETCs areas for the DTV notice. There is no automated mechanism for singling out these customers, thus requiring more time and resources than would typically be required for providing customers a bill message or billing statement insert. Moreover, beyond the labor intensive process required to make the notice available only to this subset of customers, Alltel and other ETCs will experience other significant costs such as opportunity costs, production costs (particularly with notifying prepaid customers), training and customer service costs. Alltel, like most carriers, already has planned bill messages for its customers for the next several months. These bill messages inform the customer of upcoming changes to services, whether those are changes to their invoice or new innovative products and services. To provide the DTV notice, Alltel will be required to “bump” those long-planned messages – for potentially many months – to accommodate the DTV notice.<sup>12</sup> These opportunity costs, while not the primary cost of the DTV notice, cannot be ignored as the Commission is weighing the costs and benefits of the Proposal.

Furthermore, Alltel’s prepaid customers do not receive monthly invoices. Therefore, if the Proposal were adopted, Alltel would experience a considerable increase in production and mailing costs for providing DTV notice to these customers since they would have to be provided

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<sup>11</sup> *Id.* at ¶ 18. Alltel is interpreting the Commission’s proposal that ETCs “provide notice to all of their subscribers” as meaning all subscribers in a carrier’s ETC area. *See Id.* If the Commission intended for ETCs to notify their entire subscriber base, whether or not in an ETC area, Alltel believes the Commission’s proposal is even more unreasonable as it unjustly discriminates between customers whose carrier happens to be an ETC in some areas and those whose carrier happens not to be an ETC in any areas. If the public interest is served by providing DTV notice to wireless consumers regardless of their income level, then there is no justification for limiting the notice requirement to wireless ETCs.

<sup>12</sup> *See DTV Consumer Education Order* at ¶ 53, allowing ETCs to use either bill messages or bill inserts to notify Lifeline and Link-Up subscribers of the DTV transition.

a separate, stand-alone notice. Apart from the cost of providing notice, such notice may not even reach all of Alltel's prepaid customers because oftentimes Alltel does not have a valid address for its prepaid customers. Even in cases where there is an address, there is no process for maintaining and verifying those addresses on a go-forward basis because Alltel has no justification for doing so, *e.g.*, Alltel does not send prepaid customers a monthly invoice. Thus, with respect to prepaid customers, the Proposal would impose costs on Alltel for providing notices that may never reach the intended recipient, prepaid customers.

In addition, costs will be incurred as a result of customer confusion. These expenses will include costs associated with the increased number of calls to customer service and visits to retail locations as well as costs associated with the customer service and sales training that will be required to respond to these customer inquiries. Alltel's customer service and sales teams are not steeped in the details of the transition to digital television. The transition is not relevant to the services Alltel provides its customers. Therefore, Alltel's customer service representatives and sales agents are not currently prepared to respond to inquiries about the transition. Thus, for each call to Alltel customer service or visit in its retail locations in response to the DTV notice, Alltel will incur the not-insignificant expense of the unnecessary call or inquiry, the customer service representative or sales agent will be diverted away from assisting a customer with his or her Alltel services, and the customer service representative or sales agent will have only limited information to offer the customer, other than perhaps sending them to a website with additional information or providing a toll free number for the customer to call. All of these customer interactions increase Alltel's costs of providing service not only due to the direct costs associated with handling the customer's inquiry, but also because Alltel personnel are required to spend

time with these customers discussing issues wholly unrelated to the services Alltel provides those customers.

Moreover, because the DTV transition is unrelated to Alltel's products and services, it is important to note that those calls to customer service and inquiries at the sales locations will largely be driven by customer confusion: Why is my wireless telephone provider sending me a notice about my television service? Is my wireless carrier's service in jeopardy in February 2009? Should I get a new handset or service provider? When balanced with the fact that the Commission has put in place numerous other avenues for notifying customers of the transition, the potential for confusion across millions of wireless customers outweighs the limited additional reach of the DTV notice as a result of the Proposal.

Notably, Alltel has undertaken these costs and burdens by providing monthly notice to Lifeline/Link-Up customers without complaint because Alltel understood the importance of getting the notice to consumers identified as being directly impacted by the transition - low-income wireless users. Here, however, the costs and burdens are not justified because the Proposal fails to target just those customers that the Commission has identified as most affected by the DTV transition. Furthermore, numerous advertisements, public service announcements, news stories, and crawls on the transition are already being aired on television, and Alltel is already notifying the most at-risk wireless users, its Lifeline/Link-Up customers, of the transition. Therefore, the customer confusion that is likely to result from the Proposal, combined with the significant costs it would impose on ETCs, demonstrates that the Proposal does not strike the appropriate balance and should be rejected.

#### IV. CONCLUSION

For the foregoing reasons, Alltel respectfully requests that the Commission reject the FNPRM Proposal requiring ETCs to provide monthly notice to all of their subscribers, rather than just Lifeline/Link-Up customers.

Respectfully submitted,

June 27, 2008

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